

# EXHIBIT 3

VOL: I  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\* \* \* \* \*  
SHEILA J. PORTER, \*  
Plaintiff \*  
-vs- \* Civil Action  
ANDREA CABRAL; SUFFOLK COUNTY \* No. 04-11935-DPW  
SHERIFF'S DEPARTMENT; SUFFOLK \*  
COUNTY and CORRECTIONAL MEDICAL \*  
SERVICES, INC., \*  
Defendants \*  
\* \* \* \* \*

DEPOSITION OF ANN MACK, a witness  
called on behalf of the Plaintiff, in the  
above-captioned matter, said deposition being  
taken pursuant to the Federal Rules of  
Civil Procedure, before Patricia M.  
McLaughlin, a Certified Shorthand Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the offices of Goodwin Procter  
LLP, Exchange Place, Boston, Massachusetts, on  
Tuesday, May 3, 2005, commencing at 10:05 a.m.

McLAUGHLIN & ASSOCIATES COURT REPORTERS  
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MALDEN, MASSACHUSETTS 02148  
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1 A Approximately five years.

2 Q What was your position there?

3 A Director of clinical services.

4 Q Where did you work prior to Goldberg Medical  
5 Associates?

6 A I was in graduate school. I was part time at  
7 New England Medical Center.

8 Q What did you get your graduate degree in?

9 A Family and community nursing, family nurse  
10 practitioner.

11 Q What does CMS do?

12 A CMS contracts with county sheriff  
13 departments, county commissioner offices,  
14 state departments of corrections to provide  
15 medical services, psychiatric services,  
16 dental services in correctional facilities  
17 all over the country.

18 Q Does CMS only service correctional  
19 facilities?

20 A Yes.

21 Q Approximately how many correctional  
22 facilities does it service?

23 A Right now, I think we serve about 230,000  
24 inmates, 225,000 inmates, in about 27 states.

1 Q Do you know how many facilities  
2 approximately?

3 A I think we have nine statewide prison systems  
4 and 50 jails. It changes. We pick up  
5 contracts, and we lose contracts.

6 Q Does CMS currently service correctional  
7 facilities in Massachusetts?

8 A Yes.

9 Q Which ones are those?

10 A Essex County Correctional Facility.

11 Q Any in New England besides Massachusetts?

12 A The State of Maine, the Maine Department of  
13 Corrections.

14 Q Any others in Maine?

15 A Cumberland County in Maine, Portland, Maine.

16 Q Any others in New England?

17 A No.

18 Q In the last, say, five years, what additional  
19 prison facilities in Massachusetts has CMS  
20 provided services for?

21 A The prison systems would be the Massachusetts  
22 Department of Corrections and Vermont.

23 Q Which specific facilities within the  
24 Department of Corrections in Massachusetts?

1           their background and their experience and see  
2           if there will be a fit. It's an unusual  
3           environment. It's not for everybody.

4           Q    CMS comes in and says here is who we suggest  
5           will be our team, so to speak?

6           A    Most often, we don't, but from time to time,  
7           our clients will be involved in at least  
8           reviewing who we propose as management staff.

9           Q    Does the prison have any say as to whether or  
10          not particular individuals are acceptable or  
11          not?

12          A    They have say most often around credentials.

13          Q    What do you mean by that?

14          A    If we are looking at a physician who is going  
15          to work at the facility to provide primary  
16          care, they will want someone who is board  
17          certified or board eligible in internal  
18          medicine, family medicine, emergency medicine  
19          and not cardiology, something to do with a  
20          specific separate board.

21          Q    The individuals that CMS provides for these  
22          prisons, they go to work in a prison  
23          infirmary? Is that how it's categorized?

24          A    It depends on the site. It's an area within

1 the facility where health services is  
2 provided.

3 Q Fair enough. Could you describe the  
4 organizational structure within that area  
5 where the health services are provided?  
6 Let's talk in particular about Suffolk County  
7 just to narrow things down for.

8 A At Suffolk County, the organizational  
9 structure would be the health services  
10 administrator, and that's the lead of the  
11 health services team. There is also a site  
12 medical director, a site director of mental  
13 health, and those three are the members of  
14 the team that are responsible to manage the  
15 services.

16 Q What does the health services administrator  
17 do?

18 A Her role is to monitor the day-to-day  
19 operations of the facility in the health  
20 services department to ensure that quality  
21 care is being provided, to ensure that access  
22 to care is happening, to ensure that all the  
23 staff that we bring on board are licensed and  
24 qualified to provide the services that we

1 A Chances are the vast majority are with Prison  
2 Health Services.

3 Q I'm asking if you are aware whether they are  
4 or not.

5 A I wasn't at the site and wouldn't know  
6 specific individuals that were or weren't  
7 retained by them.

8 Q Were these employees notified that they were  
9 being terminated by CMS due to losing the  
10 contract?

11 A Yes.

12 Q What form did that notice -- how was that  
13 notice communicated?

14 A Through our human resources department.

15 Q So somebody called them presumably or sent  
16 them a letter?

17 A They were notified verbally at the site once  
18 the decision was made that the county was  
19 awarding the contract to PHS, and then they  
20 received letters in the mail.

21 Q Does CMS keep files on all of its employees?

22 A Original documents for employee files are  
23 kept at the sites. We have two files. You  
24 have the personnel file with the credentials

1 and the licensure and the training, and we  
2 have a medical file. That would be your TB  
3 test and your worker's comp. related  
4 documents, medically-related stuff, return to  
5 work slips, things of confidential nature  
6 that would be kept separately.

7 Q Are both of these files kept on site at the  
8 various sites?

9 A Yes.

10 Q But they are CMS's files, right?

11 A Yes.

12 Q Who decides what documents go in these files?

13 A We have a checklist of required documents in  
14 the files.

15 Q How long are these documents kept? How long  
16 are the employee files maintained?

17 A When we lose a contract or if an employee  
18 leaves CMS for whatever reason, the original  
19 file is forwarded to the corporate office.

20 Q How long is it maintained at the corporate  
21 office?

22 A I don't know the exact number of years, but  
23 we also have an archive file where they will  
24 go to. I don't know the exact number of



1 administrator goes into the payroll system  
2 and inputs the information for the increase.

3 Q Does CMS ever remove documents from  
4 employee's files for any reason?

5 A I wouldn't think so. It may happen from time  
6 to time.

7 Q Under what circumstances might it happen?

8 A Not necessarily remove, but review. We  
9 continually do a quality review of our  
10 personnel records just to make sure that the  
11 content of the files is accurate.

12 Q In the course of that review, would documents  
13 be removed?

14 A Nothing would be removed that wouldn't be put  
15 back in it.

16 Q I assume you're familiar with Sheila Porter,  
17 the plaintiff in this case?

18 A Very familiar.

19 Q You have known her for a number of years. I  
20 take it?

21 A Probably 20, 16.

22 Q When did Mrs. Porter begin working at CMS?  
23 Was it when CMS got the contract with  
24 Suffolk?

1 A Yes.

2 Q How did it come to pass that she came to CMS?

3 A She was previously working at the jail under  
4 Correctional Healthcare Solutions.

5 Q When CHS lost the contract, did someone from  
6 CMS approach Mrs. Porter and ask if she would  
7 stay on at the prison?

8 A We have a human resource staff and clinical  
9 program staff that come from the corporate  
10 office during a transition, and they meet  
11 with any of the existing staff, give out  
12 application for employment forms and meet  
13 with the staff around consideration of  
14 employment. I'm sure at that time that's  
15 what happened with Sheila.

16 Q What's the criteria that CMS considers in  
17 determining whether to keep somebody on in a  
18 prison situation like this?

19 A The criteria would be dependent upon what our  
20 contractual agreement is with the county for  
21 staffing. We have a contractual obligation  
22 to provide specific FTE, full-time equivalent  
23 positions. Licensure, experience,  
24 appropriate credentials would be requirements

1 of bringing someone on board.

2 Q With respect to Mrs. Porter, why did CMS  
3 determine that it wanted to have her continue  
4 as a nurse practitioner at Suffolk County?

5 A Sheila has experience in correctional  
6 healthcare. It's fairly obvious. I have a  
7 familiarity with Sheila. I think Sheila has  
8 joked a couple of times to me that I have  
9 hired her five times. We have a relationship  
10 that goes way back, a working relationship  
11 that I never had a problem with Sheila's  
12 performance. She did a great job as a nurse  
13 practitioner for us, particularly in women's  
14 healthcare. We believe that she was an asset  
15 for that program. I would have advocated for  
16 her to be retained.

17 Q What position was she hired for at the  
18 Suffolk County House of Corrections when CMS  
19 received the contract?

20 A Nurse practitioner.

21 Q To be clear, she was hired specifically to  
22 work at the House of Corrections, the Suffolk  
23 County House of Corrections?

24 A Yes.

1 Q But not hired to work for CMS as a general  
2 matter but rather to work specifically in  
3 that prison?

4 A No, she was employed by CMS and specifically  
5 to work for CMS in the health services unit  
6 at that jail.

7 Q Was she a full-time employee?

8 A I believe she was full time, doing four  
9 ten-hour days.

10 MR. SCHUMACHER: Let the record reflect  
11 that I'm asking Mrs. Porter not to indicate  
12 anything.

13 THE WITNESS: She was full time.

14 Q What was her salary?

15 A Most nurse practitioners at that site or  
16 around this region made probably around \$35,  
17 \$33 an hour.

18 Q Did she receive full benefits?

19 A Yes, she would have as a full-time employee.

20 Q What did those benefits generally include?

21 A Health insurance, dental insurance. She  
22 would have a co-pay to both of those, dental  
23 and vision. 401(k) opportunity. Then her  
24 other benefits included pay time off days.

1 Q Was she required to undergo a background  
2 check?

3 A All correctional facilities require anyone  
4 entering a facility, whether or not it's an  
5 employee of ours or a vendor that we're  
6 bringing in that's going to read X rays,  
7 services or whatever, to complete a  
8 background check.

9 Q What is your understanding of what goes into  
10 a background check?

11 A Every jurisdiction does it differently. I'm  
12 not sure how indepth Suffolk County's  
13 background check is. It wouldn't be  
14 something that we would be involved in.

15 Q The prison performs the background check --

16 A Right.

17 Q -- rather than CMS?

18 A The jail.

19 Q Thank you. Were you personally involved in  
20 Sheila's hiring this last time? Excuse me.  
21 Were you personally involved in Sheila's  
22 hiring when CMS received the Suffolk County  
23 contract?

24 A I don't remember.

1 A Not that often, but from time to time per  
2 their request. If we have an opening,  
3 certainly, we would make a consideration. If  
4 we don't have a position available, then it  
5 wouldn't occur.

6 Q Does CMS provide orientation and training for  
7 its new employees?

8 A Yes.

9 Q Do they do this for Mrs. Porter?

10 A Yes, an orientation checklist is to be  
11 completed and placed in her personnel file.

12 Q Could you generally describe what the  
13 orientation entails?

14 A It would be review of the orientation  
15 manuals. There are two orientation manuals,  
16 so that the employee would be familiar with  
17 CMS policy and procedure, and it would be  
18 review of the Employee Success Guide, so they  
19 understand the terms and conditions around  
20 employment with CMS and the signature that  
21 there is acknowledgement of that.

22 I think for a nurse practitioner it also  
23 includes review of clinical pathways and  
24 anything related to chronic disease

1           A     It varied from time to time. I'm not real  
2                   familiar with the specifics of what the  
3                   county offers, but we have an initial  
4                   security training on the dos and don'ts with  
5                   inmates and what to be aware of and safety in  
6                   the workplace.

7           Q     So you're aware that Suffolk would have  
8                   ~~offered or required~~ orientation and training,  
9                   but you're not familiar with the specifics of  
10                  that; is that fair to say?

11          A     Yes, I wouldn't have been involved. It would  
12                  be the administrator who would be working  
13                  with their training director or the deputy  
14                  superintendent over medical to establish  
15                  security and training requirements, and  
16                  basically, in any jail or correctional  
17                  facility, that's related to things like  
18                  hostage taking and contraband, what you don't  
19                  bring into the facility, and most things that  
20                  are related to staff safety.

21          Q     So the CMS health services administrator at  
22                  that facility would be more familiar with the  
23                  orientation and training that the  
24                  correctional facility offers?

1 A Yes.

2 Q What were Mrs. Porter's job responsibilities  
3 at Suffolk?

4 A Sheila's role would have been to serve as a  
5 primary healthcare provider, as a mid-level  
6 provider to work within her licensure to see  
7 inmates, and basically, she would do sick  
8 call and see inmates that would put a request  
9 to be seen slip in for various complaints.  
10 She would also do chronic care clinic.

11 I know Sheila particularly did a lot of  
12 the women's healthcare and sick care, GYN,  
13 some OB. She would also be involved in a  
14 reviewing of some of the diagnostic tests  
15 that she would have ordered on staff.

16 Q Where did she report to work? I'm not trying  
17 to trick you. Where did she show up to work  
18 in the morning?

19 A That's an easy question. We employed her to  
20 work for us at the Suffolk County House of  
21 Corrections.

22 Q So the Suffolk County House of Corrections?

23 A Yes.

24 Q Where was the medical facility within the



1 reviewed while she was at CMS?

2 A It would be the expectation that she would  
3 have. Whether or not the administrator did  
4 that. I don't know that.

5 Q Is it your testimony that it's entirely up to  
6 the health services administrator whether or  
7 not to review an employee?

8 A ~~It is their requirement to perform an~~  
9 evaluation of staff prior to submitting a  
10 request for a merit increase. Sheila  
11 received merit increases showing good  
12 performance.

13 Q What does that indicate to you then?

14 A It would be my understanding that -- she  
15 reported directly to Donna Jurdak -- that if  
16 she received a 3 percent merit increase, that  
17 she had good performance in her job duties at  
18 that site.

19 Q And the fact that she received her merit  
20 increase, does that indicate to you that she  
21 received a performance review?

22 A Not necessarily, although a performance  
23 review was required to be performed on all  
24 staff by their supervisor.

1 particular instance?

2 A No.

3 Q Was that ever a problem that cropped up with  
4 respect to Donna?

5 A Not that I'm aware of.

6 Q Did Mrs. Porter receive her merit increases  
7 while she was at CMS?

8 A Yes.

9 Q Besides Mrs. Porter, are you aware of any  
10 other instance where an employee received a  
11 merit increase without first receiving a  
12 performance review?

13 MS. HARVEY: Objection.

14 Q You can answer the question unless your  
15 attorney specifically instructs you not to  
16 answer the question.

17 A I have no knowledge of that.

18 Q Are you aware of any specific instance  
19 besides Mrs. Porter's situation?

20 A No, I'm not.

21 MR. SCHUMACHER: Would you mark this as  
22 Exhibit 2.

23 (Document marked Exhibit No. 2.)

24 BY MR. SCHUMACHER:

1 performance that you're aware of?

2 A We received several other commendations. I'm  
3 not sure whether or not Sheila's name was  
4 ever identified in it. I don't believe it  
5 was.

6 Q This 2002 commendation, that was placed in  
7 Mrs. Porter's personnel file, correct? Would  
8 it surprise you if I told you we found it in  
9 Mrs. Porter's personnel file?

10 A It wouldn't surprise me? No.

11 Q When Mrs. Porter was fired, did it have  
12 anything to do with her job performance?

13 MS. HARVEY: Objection.

14 A Sheila Porter wasn't fired.

15 Q Was she terminated?

16 A Sheila Porter was not terminated by CMS.

17 Q Well, on June 9th, she was an employee for  
18 CMS, correct?

19 A Yes.

20 Q And on June 11th, she wasn't an employee for  
21 CMS, was she?

22 A No.

23 Q So at some point, her employment with CMS was  
24 terminated, right?

1 A Yes.

2 Q And did that termination have anything to do  
3 with her job performance?

4 A No.

5 Q You testified earlier that CMS was satisfied  
6 with Mrs. Porter's job performance; is that  
7 right?

8 A That's correct.

9 Q I don't want to put words in your mouth, but  
10 I think you testified that she was an  
11 excellent nurse practitioner; is that right?

12 A She was a very good nurse practitioner, a  
13 great clinician.

14 Q How was she generally regarded by other CMS  
15 employees?

16 A I can't speak of others.

17 Q Do you know how her work performance was  
18 regarded in general by other CMS employees?

19 A Everyone considered Sheila a good  
20 practitioner at that facility to my  
21 knowledge.

22 Q Was she hard working?

23 A Sheila is a hard worker.

24 Q Did she report to work on time?

1 A To my knowledge, Sheila reported to work on  
2 time.

3 Q Did she maintain good relationships with  
4 other people she worked with?

5 A I believe Sheila maintained good  
6 relationships with others.

7 Q Technically, in terms of her delivery of  
8 medical services, she did a good job with  
9 that as well?

10 A Yes.

11 Q Did she receive merit raises every year that  
12 she was at CMS?

13 A I believe so.

14 Q Do all CMS employees receive raises every  
15 year?

16 A All employees are reviewed every year for an  
17 increase, and it can be anywhere between --  
18 it's usually between zero and 3 percent.

19 Q It can be anywhere from zero to 3 percent?

20 A Yeah.

21 Q 3 percent is the maximum allowable raise?

22 A It depends on the circumstance.

23 Q In fact, did Mrs. Porter receive the maximum  
24 allowable raise every year that she was at

1           A     The only thing that was communicated to us  
2                   was the conversation that Mary Ellen  
3                   Mastrorilli had with Donna Jurdak and Sheila  
4                   in the room was that Sheila was being barred  
5                   from the facility for violation of their  
6                   policy related to communicating with outside  
7                   agencies or something to that effect.

8           Q     Miss Jurdak was a CMS employee, correct?

9           A     Right.

10          Q     In fact, she was the health services  
11                 administrator for the prison?

12          A     That's correct.

13          Q     She had overall responsibility for the  
14                 management of the day-to-day affairs of the  
15                 prison from CMS's perspective; isn't that  
16                 right?

17          A     Yes, she was responsible for the daily  
18                 operations at the jail.

19          Q     And she was in the room when it was  
20                 communicated to Mrs. Porter that she was  
21                 being barred from the facility; is that  
22                 right?

23          A     That's correct.

24                         MR. SCHUMACHER: Let's mark an exhibit.

1           those communications between Miss Jurdak and  
2           the House of Corrections?

3           A     I'm not real familiar with that.

4           Q     Are you familiar with it at all?

5           A     No.

6           Q     Is there anyone at CMS who is in a better  
7                 position to answer that question besides  
8                 Miss Jurdak, who is no longer at CMS?

9           A     No.

10          Q     Did Miss Jurdak communicate to anyone at CMS  
11                 the subject of this interrogatory prior to  
12                 June 10th, 2003?

13          A     I don't believe so.

14          Q     So is it your testimony that you hadn't heard  
15                 anything about these allegations prior to  
16                 June 10th, 2003?

17          A     I do not recall anything related to these  
18                 allegations prior to June, 2003.

19          Q     Who does Miss Jurdak report to?

20          A     Miss Jurdak would have reported to the  
21                 regional jail manager.

22          Q     Who was that?

23          A     I think at that time it was Marilyn  
24                 Morningstar.

1 had been locked out of the House of  
2 Corrections?

3 A I believe it was June 10th. It was  
4 June 10th.

5 Q Was that the day that she was, in fact,  
6 locked out?

7 A Yes.

8 Q So on the day she was locked out, CMS was  
9 notified that that had happened?

10 A Yes.

11 Q How would CMS be made aware that she was  
12 locked out?

13 A Donna, her administrator, was made aware of  
14 it right away because she was part of that  
15 meeting with Deputy Superintendent  
16 Mastroilli, where it was communicated to  
17 Sheila and to our administrator that she was  
18 being barred from the facility.

19 Q Did Donna report that up the food chain at  
20 all?

21 A Donna called me.

22 Q What transpired during that conversation?

23 A Donna told me she just walked out of a  
24 meeting with Sheila and Mary Ellen



1           Mastrorilli, the deputy superintendent at  
2           that time, and that Mary Ellen communicated  
3           to both of them that Sheila was being barred  
4           immediately from the facility based on  
5           violating the county's policy about  
6           communicating with outside agencies.

7           I know Donna was shocked and couldn't  
8           believe it. She said something to the effect  
9           of, "What the hell," or, "Mary Ellen, what is  
10          going on? I don't understand this." She  
11          said, "I can't talk about it." That's how it  
12          was communicated to me.

13        Q   Did Donna communicate to you any of the  
14            specifics about the communication with an  
15            outside agency?

16        A   I believe she mentioned that there was an  
17            issue regarding Sheila talking to the FBI.

18        Q   Was this the first time that you had heard  
19            about any of this?

20        A   Yeah, I think this is the first time I was  
21            made aware of Sheila talking to the FBI.

22        Q   The question should have been more clear.  
23            This is the first time you were made aware of  
24            Sheila's lockout?

1 A Absolutely.

2 Q And her communications with the FBI --

3 A Yeah.

4 Q -- or any other outside agency?

5 A Yes.

6 Q What did you say to Miss Jurdak during that  
7 conversation?

8 A I said, "I don't understand this. Let me  
9 call Mary Ellen and see if I can talk to her  
10 about this, see what's going on."

11 Q Who is Mary Ellen?

12 A Mary Ellen Mastrorilli was the deputy  
13 superintendent at the time. She was over  
14 medical.

15 Q What do you mean, she was over medical?

16 A Her responsibility was to manage the medical  
17 department for the jail.

18 Q Did you, in fact, call Mary Ellen?

19 A I did.

20 Q When?

21 A I think it was within an hour. It was the  
22 same day.

23 Q Did you reach her?

24 A I did.

1 Q What was the substance of that conversation?

2 A I said, "Mary Ellen, I just spoke with Donna,  
3 and I understand there is a situation that  
4 Sheila is barred from the facility. Can we  
5 talk about it?" She said, "I can't talk  
6 about it. It won't change. I can't change  
7 it. She violated county policy." That was  
8 pretty much the extent of our conversation.

9 Q That exhausts your memory of the conversation  
10 you had with Miss Mastrorilli?

11 A It was short, yeah.

12 Q Under a minute?

13 A It may have been.

14 Q A couple of minutes tops?

15 A Yeah.

16 Q What did you do after speaking with  
17 Miss Mastrorilli?

18 A Probably called Donna back.

19 Q Do you remember the substance of that  
20 conversation?

21 A I believe I said it doesn't look like we're  
22 able to change matters here; she's barred  
23 from the facility; and there's nothing we can  
24 do about it.

1 Q Is he above you in the organizational  
2 structure of CMS?

3 A No.

4 Q Sort of a lateral-type position?

5 A No, our human resources department in the  
6 corporate office has assigned various  
7 directors to certain regions. He has been  
8 assigned to be the resource for human  
9 resources to this region.

10 Q Who is it at CMS that makes the ultimate  
11 decision of whether or not to terminate an  
12 individual, one of its employees?

13 A I think basically it's the administrator.  
14 It's the person that is responsible to  
15 oversee that staff member.

16 Q The health services administrator?

17 A If it's a staff person, yes.

18 Q Do they have unfettered discretion whether or  
19 not to terminate someone?

20 A It depends on the circumstances. It has to  
21 be consistent with our Employee Success  
22 Guide.

23 Q Are there circumstances where the health  
24 service administrator would have unfettered

1 discretion to terminate a staff person?

2 A No, I don't believe so.

3 Q In all circumstances, there would be some  
4 oversight by other individuals at CMS as to  
5 that decision?

6 A Yes.

7 Q You don't recall whether or not you called  
8 Sterling Price or whether you instructed  
9 Donna to call Sterling Price. Do you recall  
10 having a conversation with Sterling Price  
11 about this?

12 A I can't recall a hundred percent, but  
13 vaguely. I recall talking to Sterling about  
14 whether or not we had any other opportunity  
15 to work with Sheila around this barring  
16 situation with the county. Basically, I knew  
17 the answer, but maybe I didn't want to give  
18 up on it. We have been in this industry long  
19 enough to know, all of us at CMS, Sheila, to  
20 know that if you're barred from an  
21 institution, you're barred from an  
22 institution and they have the power and the  
23 control to hold us to that.

24 Q Did CMS investigate the circumstances of the

1           barring?

2           A     No, we basically went on the communication  
3                from Donna and the communication to me that  
4                Sheila was being barred for a violation of  
5                county policy.

6           Q     Did CMS attempt to make any determinations as  
7                to whether the barring was justified?

8           A     I believe I attempted to when I called Mary  
9                Ellen, and she said that she wasn't in a  
10               position to discuss the matter.

11          Q     I'm sorry. Did you want to finish your  
12                answer?

13          A     Todd Aschbacher, our attorney n the follow-up  
14                weeks made a call to one of the attorneys at  
15                Suffolk. I want to say her name was Ann  
16                Powers. I'm not sure what her name was, but  
17                we did call one of the county attorneys to  
18                discuss the matter. We were told that by no  
19                means were they going to change the position  
20                on it.

21          Q     Were these the only two calls that were made  
22                on CMS's behalf with regard to this incident?

23          A     Yes.

24          Q     Why was the second call made?

1 A I personally don't know what prompted it.

2 Q Was it on CMS's own initiative?

3 A I don't know.

4 Q If we could take a look at the Interrogatory  
5 Responses -- I'm not sure what number it has  
6 been marked as. If you could take a look at  
7 Exhibit No. 7, approximately in the middle of  
8 the of the response, it starts, "Todd  
9 Aschbacher of CMS spoke with an attorney for  
10 the HOC after receiving the demand letter  
11 from Mrs. Porter's counsel to see if the HOC  
12 was interested in discussing and  
13 reconsidering its decision to lockout  
14 Mrs. Porter, but was advised that they were  
15 not interested in doing so."

16 Does that refresh your recollection as  
17 to why the second call was made?

18 A Yes, it does.

19 Q Do you remember now that it was prompted by a  
20 letter from Mrs. Porter's counsel?

21 A Yes.

22 Q As opposed to being on CMS's own volition?

23 MS. HARVEY: Objection.

24 A I wasn't a hundred percent clear what

1 Q Did CMS talk to -- did CMS conduct an  
2 internal investigation as to these  
3 allegations?

4 A No.

5 Q Did CMS talk to any of the employees on site  
6 within the medical facility at the House of  
7 Corrections concerning these allegations?

8 A No. I don't think so.

9 Q Was Dr. Singletary asked if he knew what had  
10 happened?

11 A Not from me.

12 Q By CMS?

13 A Possibly by Donna. I don't know what Donna's  
14 communications were at the site.

15 Q But CMS didn't launch a formal internal  
16 investigation as to these allegations, right?

17 A No.

18 Q Now, at some point subsequent to receiving  
19 this information, CMS had made the decision  
20 to terminate Mrs. Porter, right?

21 A That's correct.

22 Q I think you testified that it was made on the  
23 same day; is that right?

24 A It might have been the following day.



1 Q No later than the following day?

2 A Right.

3 Q Who made that termination?

4 A I think in consult with our director of human  
5 resources, we had no choice but to terminate  
6 her employment with CMS since she had no  
7 ability to enter the facility.

8 Q Which CMS employees were involved in the  
9 decision to terminate Mrs. Porter?

10 A It would have been me, Donna Jurdak and, most  
11 likely, Sterling Price.

12 Q Would any other employees have been involved  
13 in that decision?

14 A No, I don't think so.

15 Q Counsel?

16 A Probably not at that point.

17 Q If you can refer to the interrogatory  
18 responses again, we're looking at  
19 Interrogatory No. 8 this time. Take a look  
20 at it. "The interrogatories describe in  
21 detail all communications within CMS" --  
22 there is a parenthetical -- "since June 1,  
23 2003, concerning Mrs. Porter's employment  
24 status with CMS and/or her being barred from

1 Mrs. Porter after she was locked out?

2 A CMS didn't have a choice as to what we could  
3 do with Sheila. We didn't have a position.  
4 She wasn't allowed access to the facility.  
5 We didn't have a position for her. We can't  
6 put her on any payroll anywhere. She's not  
7 working for us. We don't have the  
8 contractual hours. We are already covering  
9 those hours everywhere.

10 Q What did you base your belief that you didn't  
11 have a position for her on?

12 A Just communicating around any open positions.  
13 That's easy.

14 Q So what did you do?

15 A We communicated with Essex County, Franklin  
16 County. Those positions were filled. Those  
17 were the two contracts we had in  
18 Massachusetts.

19 Q Essex County, and what was the other?

20 A Franklin.

21 Q Which facilities are those?

22 A Essex and Franklin.

23 Q That's their title, the Essex House of  
24 Corrections and the Franklin House of

1 terminating someone and the decision as to  
2 the termination. Obviously, she was  
3 terminated. She's tried to explain to you  
4 ten different ways. You're asking her for  
5 hours about that process. The process to  
6 terminate her is made.

7 Did they want to? Did they make the  
8 ~~decision that she shouldn't work there~~  
9 anymore? No. That decision was made for  
10 them by the entity.

11 MR. SCHUMACHER: The record will reflect  
12 that she testified a number of times earlier  
13 today that she wasn't terminated; that nobody  
14 at CMS terminated her without making the  
15 decisions that you just stated.

16 MS. HARVEY: That's correct, because  
17 there is two different distinctions here.  
18 I'm sorry if you don't see it. We see it. I  
19 don't like you implying that anybody has been  
20 untruthful. If you look at other answers,  
21 you'll see very clearly the distinction that  
22 was made by CMS and Miss Mack, who signed  
23 these answers.

24 THE WITNESS: I've clearly communicated

1 A Yes.

2 Q You talked to Miss Jurdak and you made the  
3 call to Miss Mastrorilli, right?

4 A Right.

5 Q Did you contact Mrs. Porter to ask her what  
6 happened?

7 A No.

8 Q Why not?

9 A I didn't see that it was our place.

10 Q Why not?

11 A Because there was no opportunity to have her  
12 allowed back into the facility since the  
13 county had made a decision on barring her.

14 Q Weren't you curious to get Mrs. Porter's side  
15 of the story?

16 A Our contract with the county clearly  
17 identifies that they have the right to bar  
18 any our employees from entering the facility.

19 Q Weren't you curious to get Mrs. Porter's side  
20 of the story?

21 A No, I wasn't curious.

22 Q You didn't think CMS had a responsibility to  
23 get its employee's side of the story?

24 MS. HARVEY: Objection.

1           A     We were in a position where Sheila was not  
2                   going to be allowed to re-enter the facility.  
3                   So we weren't in a place to start any  
4                   investigation or to dispute whether or not  
5                   that was an appropriate decision by the  
6                   county.

7           Q     So it's your testimony that you instructed  
8                   Miss Jurdak to communicate to Mrs. Porter  
9                   that she had been terminated by CMS?

10          A     That was her responsibility.

11          Q     Did you communicate that to her?

12          A     Yes.

13          Q     Did that, in fact, happen?

14          A     Presumably.

15          Q     Do you know if it happened or not?

16          A     I haven't spoken with Donna about it.

17          Q     Did you ever follow up with her to say did  
18                   you follow up on my instructions to speak  
19                   with Mrs. Porter to tell her that she was  
20                   terminated?

21          A     No, I have multiple staff that report to me.  
22                   If I had to call to follow up on instructions  
23                   that I gave to anybody, then there would have  
24                   to be ten of me.

1 resources, and then the decision would be  
2 determined.

3 Q Who makes the recommendation for termination?

4 A It's under the direction of human resources  
5 specialists. The decision to process the  
6 termination in this case, because we really  
7 processed the termination, we didn't want to  
8 ~~terminate Sheila, was determined by the three~~  
9 of us talking, and Donna was given  
10 instruction to terminate, which she did. She  
11 had to enter it into the system, and it was  
12 entered into our T3 PeopleSoft system for  
13 payroll to terminate Sheila, which has to  
14 done at the site. It has to be done at the  
15 facility.

16 Q If you communicated to a health services  
17 administrator that he or she was supposed to  
18 inform an employee that they were terminated  
19 and that never happened, would that be  
20 grounds for discipline on behalf of the  
21 health services administrator?

22 MS. HARVEY: Objection. Beyond the  
23 scope.

24 A It depends on the circumstances around it.

1 draft, so we would have gotten clarification  
2 on --

3 Q Do you believe this first document is a  
4 draft?

5 A I don't know.

6 Q On both documents -- let's look at the signed  
7 document. The signed document is the  
8 official recommendation for termination; is  
9 that right?

10 A That's right.

11 Q About a third of the way down the page, it  
12 says, "Date of verbal counseling," and it  
13 says, "None"; is that right?

14 A That's right. That's if you're following our  
15 Employee Success Guide disciplinary process  
16 for a verbal warning, then written warnings,  
17 then an final warning and then a  
18 recommendation for termination.

19 Q And under date of written counseling and date  
20 of final written warning, it also says  
21 "none," right?

22 A That's right.

23 Q And that's because, in fact, there was no  
24 verbal counseling, written counseling or any

1 final written warning in this case, right?

2 A Right.

3 Q Before Mrs. Porter was terminated on June 10  
4 or June 11, 2003, was she actually offered  
5 another position with CMS?

6 A No.

7 Q And that's because you determined you had no  
8 other nurse practitioner positions available  
9 in Massachusetts?

10 A Right.

11 MR. SCHUMACHER: Let's mark as an  
12 exhibit, Exhibit 10.

13 (Document marked Exhibit No. 10.)

14 BY MR. SCHUMACHER:

15 Q This exhibit contains pages from the bid that  
16 was submitted to Suffolk County from CMS. I  
17 have the whole bid here. I chose not to  
18 reproduce the whole thing and cut a couple of  
19 trees. If you can take a look at the couple  
20 of pages selected, primarily the first three  
21 pages.

22 A (Witness complies.)

23 MS. HARVEY: David, you know that the  
24 bid that I produced was the original 2001.



1 year.

2 Q Understood.

3 A It was rebid again in a little over a year.

4 Q Did CMS provide healthcare services to fewer  
5 facilities at the time of the second bid?

6 A We may have.

7 Q Do you know whether it did or not?

8 A We may have. I'm not sure.

9 Q Was it still the largest provider of  
10 correctional healthcare services in the  
11 country?

12 A At that point we may have been more  
13 consistent in revenue with our competitor.

14 Q Were you in the top two or three?

15 A Top two.

16 Q And you provided facilities, at least at the  
17 time of this bid, you provided facilities in  
18 Massachusetts, correct?

19 A Yes.

20 Q Out of all these facilities that were  
21 available to CMS, it's your testimony that  
22 there were no nurse practitioner positions  
23 able to Mrs. Porter?

24 MS. HARVEY: Objection.

1 A Out of what facilities?

2 Q Out of all the facilities that CMS had in the  
3 country as of June, 2003, were there nurse  
4 practitioner positions available?

5 A There were probably openings in some of the  
6 various places, states.

7 Q What you looked at is whether there were  
8 positions available in Massachusetts, right?

9 A Yeah.

10 Q And it's your testimony that there were only  
11 two counties and there were no nurse  
12 practitioner positions available?

13 A Yes.

14 Q Did you inquire as to surrounding states as  
15 to whether there were nurse practitioner  
16 positions available?

17 A No, it was communicated that Sheila only  
18 wanted something local.

19 Q Who communicated that?

20 A Donna.

21 Q When?

22 A Donna had called me and inquired as to  
23 whether or not we still had any other  
24 positions available for Sheila.

1           made it apparent that she would be open to  
2           that.

3           Q     Certainly, CMS never inquired as to whether  
4                 there were surrounding positions available in  
5                 states other than Massachusetts for Sheila at  
6                 this time?

7           A     No, we didn't investigate that. We didn't,  
8                 but, in fact, when it was time to offer  
9                 Sheila the position at Essex County, she  
10                thought that was too far.

11          Q     That was four months later?

12          A     Three, four.

13          Q     Three or four?

14          A     Three or four.

15                MS. HARVEY: Three.

16          Q     Counsel says three. Three or four.

17          A     Yeah. It would take time for her to get a  
18                 license in another state. It's not something  
19                 that can happen overnight. If she had  
20                 inquired, we would have investigated. We  
21                 would have been open to putting her in one of  
22                 those other positions. She was strong  
23                 clinically.

24          Q     But on your own, it's nothing that you

1 practitioner hours.

2 Q Did you ask whether there were any per diem  
3 positions available as well?

4 A No.

5 Q Why not?

6 A I don't know. I was trying to find her a  
7 full-time job.

8 Q If the option was --

9 A I was told she was looking for a position  
10 with U. Mass. She was looking for a position  
11 closer to home.

12 Q I'm still focusing on when she terminated,  
13 immediately prior to when--

14 A I'm just explaining why I didn't hire her as  
15 a PRN, because I know she wanted full-time  
16 opportunities.

17 Q Did you know that on June 10 of 2003?

18 A That's what we were looking into.

19 Q I understand that. But did you know that was  
20 the only position that Mrs. Porter would  
21 accept at that point?

22 A No.

23 Q And you didn't investigate whether or not per  
24 diem positions were available?

1 Q And the employee benefits available to CMS  
2 employees in Section 3?

3 A Yes.

4 Q And there is also a section for employee  
5 responsibilities and guidelines, right?

6 A Yes.

7 Q And there are policies in here on everything  
8 from CMS's harassment policies to the flex  
9 spending accounts that are available to CMS  
10 and even things such as CMS no smoking areas  
11 that are available to employees? Those are  
12 among the topics covered in this guide; is  
13 that right?

14 A Yes.

15 Q When do new employees receive this document?

16 A During orientation.

17 Q How soon after they begin work at CMS is  
18 that?

19 A Within the first few weeks.

20 Q And are employees expected to read the  
21 Employee Success Guide?

22 A Yes.

23 Q In fact, the last page contains an  
24 acknowledgement page that they, in fact, read

1 A Yes.

2 Q Are employees asked to affirm and sign that  
3 they have reviewed and read the Employee  
4 Success Guide every year that they are at  
5 CMS?

6 A I know it's upon hire, and it's probably upon  
7 release of a revised handbook.

8 Q So the guide is revised from time to time?

9 A Yes.

10 Q Do you know how often it's revised?

11 A No.

12 Q Who would know how often it's revised?

13 A Probably the human resources department,  
14 executive vice-president.

15 Q Who are they?

16 A By name?

17 Q Yes.

18 A Sally Powers, executive vice-president of  
19 human resources.

20 Q Where is Miss Powers located?

21 A St. Louis, corporate office.

22 Q Would Mr. Price be familiar with whether or  
23 not the guide is updated from year to year?

24 A He would be. I don't know if he would have

1 corrective action, where practical, to  
2 facilitate improvement in conduct and  
3 performance. This assures that employees are  
4 fairly informed regarding problems and have  
5 an opportunity to correct deficiencies before  
6 more serious action is taken."

7 What's the purpose of this statement?

8 MS. HARVEY: Objection. Beyond the  
9 scope. Form. Go ahead.

10 A It basically states that our policy -- this  
11 corrective action lays out to employees that  
12 there may be a process of progressive  
13 corrective action and they can familiarize  
14 themselves with it in this document.

15 Q It doesn't say in the paragraph that I just  
16 stated that there may be a policy of  
17 corrective action. It just says that CMS has  
18 established a policy of progressive  
19 corrective action; is that right?

20 A Yes.

21 MS. HARVEY: Where practical.

22 MR. SCHUMACHER: I'm sorry?

23 MS. HARVEY: Where practical. The  
24 qualification was more consistent with what

she said.

MR. SCHUMACHER: If that's your interpretation, that's fine.

BY MR. SCHUMACHER:

Q Later in the document, it lays out what corrective action consists of; is that right? It's on the same page. I believe it begins about halfway down?

A "Verbal counseling versus written counseling, versus final written warning."

Q The first step is verbal counseling in corrective action; is that right?

A There are various steps, but in basic corrective action, there is verbal counseling. There is written counseling, a final written warning, and then a recommendation for termination.

Beyond that, there are reasons for termination that are immediate actions for termination that result in recommendations for termination, so there is two processes.

Q We'll get there. Don't worry. You'll have plenty of opportunity to speak about that. Who determines whether corrective action



takes place or not with respect to an employee?

A The administrator.

Q Is it the administrator?

A They are responsible to employ corrective action. They are trained during their orientation that that's part of their responsibility.

Q So when an administrator learns that something has happened or that a staff member has done something under certain circumstances, they're supposed to employ corrective action; is that right?

A That's correct.

Q And the first step is, where practical, this verbal counseling, right?

A Right.

Q And that consists of a confidential face-to-face counseling session; it's clearly stated where and how the behavior is unacceptable. I'm not quoting here. I'm just paraphrasing. The administrator and the employee are supposed to agree on the corrective action, and that's supposed to be

1 documented in the employee's personnel file;  
2 is that right?

3 A Yes.

4 Q And beyond that, the next step is written  
5 counseling; is that correct?

6 A Yes.

7 Q In what circumstances would written  
8 counseling be required beyond verbal  
9 counseling?

10 A It depends on the behavior or the deficiency  
11 or the action.

12 Q Is it if the behavior escalates in some way  
13 or isn't corrected?

14 A Repeated behavior on the same issue, if  
15 someone is tardy all the time.

16 Q After the verbal counseling, that behavior  
17 continues or escalates?

18 A That's right.

19 Q In that situation, there may be written  
20 counseling as well?

21 A That's right.

22 Q And the written counseling contains a written  
23 description to be signed by the employee and  
24 the supervisor, reviewed in a face-to-face

1 discussion and then follow-up conversations  
2 are supposed to occur to show whether  
3 progress has taken place; is that right?

4 A Right.

5 Q And the next step on the hierarchy is a final  
6 written warning; is that right?

7 A That's right.

8 Q When might a final written warning be  
9 required?

10 A Repeat occurrences of the same event, a  
11 significant occurrence around judgment error.  
12 It could a clinical error. It could be a  
13 personal issue. It could be breach of  
14 confidentiality, inmate confidentiality. It  
15 could be a host of things.

16 Q The health services administrator has  
17 discretion based on his or her training as to  
18 whether behavior requires corrective action;  
19 is that right?

20 A And they would communicate with the director  
21 of human resources to determine what level  
22 that discipline would fall in.

23 Q The final written warning, that is a written  
24 description of the behavior that's prepared

on a final written warning memorandum; the behavior is reviewed in a face-to-face meeting, and then -- I believe I'm quoting here. "An employee will normally receive a final written warning as the last step before recommendation for termination action is initiated."

Did I read that right and does that fairly describe what constitutes the final written warning step?

A Yeah, and really, it's when you're taking someone through the normal corrective action process. You go from a verbal to a written, to a final written.

Q And the final step is a recommendation for termination?

A Yes.

Q And that occurs presumably if the behavior is still not corrected after the final written warning?

A Yes.

Q In this case, the supervisor prepares a written termination recommendation, meets confidentially with the employee to

1 communication the decision, and then the  
2 recommendation is made; is that right?

3 A That's right.

4 Q And you'd admit that none of these corrective  
5 action policies were followed with respect to  
6 Mrs. Porter, correct?

7 MS. HARVEY: Objection.

8 A Yeah, she wouldn't fall under the category of  
9 corrective action since that action regarding  
10 termination is under the category of  
11 immediate action or termination, which would  
12 a recommendation for termination.

13 Q I'll ask you a couple of questions about  
14 immediate action or termination in a minute,  
15 but it is fair to say Mrs. Porter didn't  
16 receive any verbal counseling with respect to  
17 her alleged infractions; is that right?

18 A I'm not sure if there were any counseling  
19 documents in her personnel record that Donna  
20 may have produced.

21 Q Do you have any knowledge as to whether  
22 Mrs. Porter ever received verbal counseling?

23 A No.

24 Q Did she receive written counseling?

1 A In regards to?

2 Q In regards to the events leading to her  
3 termination.

4 A Oh, no.

5 Q Did she receive a final written warning?

6 A I thought you meant if she had any related to  
7 practice issues or personnel issues.

8 Q No, I'm talking about for the reason why she  
9 was terminated?

10 A Oh, okay.

11 Q Did she ever receive a final written warning?

12 A No, she wouldn't have.

13 Q I believe one of the earlier exhibits did  
14 show a document entitled Recommendation for  
15 Termination; is that right?

16 A Right.

17 Q But it doesn't appear that there was a  
18 meeting that's described under the  
19 Recommendation for Termination section on  
20 Page 18 with respect to Mrs. Porter; is that  
21 right?

22 MS. HARVEY: Objection.

23 A This identifies that recommendations for  
24 termination are reviewed with regional

1 management, which it was, with me, and the  
2 director of human resources, which it was,  
3 with Sterling. The supervisor prepares a  
4 written termination recommendation, after  
5 approval is secured meets with the employee  
6 to verbally communicate the termination  
7 decision. That's the administrator's  
8 responsibility.

9 Q Did Miss Jurdak meet confidentially with  
10 Mrs. Porter to verbally communication the  
11 termination decision?

12 A I don't know that for certain, but that is  
13 her responsibility as the administrator  
14 there. And that is the expectation.

15 Q So your testimony is that with respect to  
16 Mrs. Porter it was required that CMS follow  
17 the processes and procedures outlined in the  
18 recommendation for terminations section; is  
19 that right?

20 MS. HARVEY: Objection.

21 A Well, the only thing we would review with  
22 Sheila would be a communication to say you've  
23 been terminated. She doesn't review or she  
24 doesn't sign or she doesn't have to have

1 knowledge of our form that goes in her file  
2 as a matter of process. That's just a matter  
3 of the process.

4 On a termination, she's verbally  
5 communicated with by the administrator that  
6 she's terminated.

7 Q So all of the procedures outlined in the  
8 paragraph entitled "Recommendation for  
9 Termination" were followed in Mrs. Porter's  
10 case, right?

11 MS. HARVEY: Objection.

12 A I will that Donna would have communicated  
13 verbally that Sheila was terminated prior to  
14 the final -- there appears to be a lag when  
15 the recommendation for termination was  
16 signed, but in regards to preparing a  
17 recommendation for termination and  
18 communicating with human resources that  
19 occurred and with regards to having that  
20 document for her file, that occurred.

21 And in regards to the responsibility to  
22 communicate the termination with Sheila, that  
23 was Donna's responsibility.

24 Q So it's your expectation and belief that the



1 A Something that happened over at  
2 Nashua Street, some intake activities that I  
3 don't know the particulars on, but I know  
4 there was some issues with the officers  
5 there. We didn't provide services at that  
6 facility. It was something around strip  
7 searches.

8 Q Excuse me?

9 A I believe it was something around stripe  
10 searches.

11 Q When CMS was providing medical services for  
12 the House of Corrections at Suffolk, how did  
13 the employees physically gain access to the  
14 prison on a daily basis?

15 MS. HARVEY: Objection. Scope.

16 A Prior to someone being hired, they have a  
17 background check. They receive an ID. They  
18 have to wear their ID, and they can go  
19 through the main entrance of the facility  
20 with an active ID.

21 Q I believe you testified earlier that the CMS  
22 regional corporate office in Massachusetts is  
23 in Middleton; is that right?

24 A That's correct.

1 Q Do CMS employees have any reason to visit the  
2 corporate office in Middleton?

3 A From time to time.

4 Q For what?

5 A We would have meetings around -- we'd have  
6 regional management meetings. We would have  
7 some of the HSAs there. A training --

8 Q How about nurse practitioners?

9 A Really, no, not often.

10 Q So virtually, all of their time for CMS would  
11 be spent at the facility to which they were  
12 providing services?

13 A Yes.

14 Q How do CMS employees record their time, their  
15 hours?

16 A They have a swipe card. They have an  
17 electronic time clock. When they come in,  
18 they swipe in, and when they leave, they  
19 swipe out.

20 Q That's also at the prison?

21 A Yes, so there is accountability for hours  
22 that people are on site at the correctional  
23 facility.

24 Q Where do CMS employees receive their

1           paychecks?

2           A    A lot is electronically deposited.

3           Q    What if they're not?

4           A    I believe they get sent to the site  
5           administrator, and they get disseminated from  
6           her.

7           Q    So they are distributed on site?

8           A    Yes, if it's not an electronic deposit.

9           Q    Who is it that determines a nurse  
10          practitioner's daily schedule at a facility  
11          for which you're providing services?

12          A    The administrator would be responsible to  
13          identify the schedules of all clinical staff,  
14          and the DON would do the schedules or  
15          assignments for the nurses. It's really an  
16          assignment, more than a schedule.

17          Q    Who is the DON?

18          A    The director of nurses.

19          Q    That's a CMS employee?

20          A    Yes.

21          Q    Who determines which inmates a nurse  
22          practitioner would have access to on a daily  
23          basis?

24          A    If the nurse practitioner's assignment is

1 House of Corrections that a nurse  
2 practitioner may need to use on a daily  
3 basis, who provides that equipment?

4 A Large equipment was already there, exam  
5 tables, fetoscopes. We bought pulse  
6 oximeters. CMS was responsible for other  
7 small durable equipment.

8 Q So CMS purchased some equipment. The large  
9 equipment that you described earlier, who  
10 bought those pieces of equipment?

11 A I think those came -- when they built that  
12 new facility.

13 Q So the county provided those large pieces of  
14 equipment; is that right.

15 MS. CAULO: Objection.

16 A Some of it. The dialysis chairs were  
17 provided by our dialysis vendor, and the  
18 various equipment as needed, we became  
19 responsible to purchase.

20 Q So CMS bought some equipment, and the county  
21 bought some equipment; is that fair to say?

22 A That's correct.

23 Q I believe you testified that Mrs. Porter's  
24 employment records are kept on the site of

# EXHIBIT 4

VOL: I  
PAGES: 1-172  
EXHIBITS: 1-4

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\* \* \* \* \*  
SHEILA J. PORTER, \*  
Plaintiff \*  
-vs- \* Civil Action  
ANDREA CABRAL; SUFFOLK COUNTY \* No. 04-11935-DPW  
SHERIFF'S DEPARTMENT; SUFFOLK \*  
COUNTY and CORRECTIONAL MEDICAL \*  
SERVICES, INC., \*  
Defendants \*  
\* \* \* \* \*

DEPOSITION OF GERARD HORGAN, a witness  
called on behalf of the Plaintiff, in the  
above-captioned matter, said deposition being  
taken pursuant to the Federal Rules of  
Civil Procedure, before Patricia M.  
McLaughlin, a Certified Shorthand Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the offices of Goodwin Procter  
LLP, Exchange Place, Boston, Massachusetts, on  
Friday, May 13, 2005, commencing at 10:05 a.m.

McLAUGHLIN & ASSOCIATES COURT REPORTERS  
92 DEVIR STREET, SUITE 304  
MALDEN, MASSACHUSETTS 02148  
781.321.8922  
WWW.E-STENOGRAPHER.COM

1           Rosario; that she was involved in the  
2           situation and that she briefed the Sheriff  
3           and ultimately the decision was made to  
4           inform CMS that we were going to bar  
5           Sheila Porter from the facility.

6           Q    Did Miss Keeley tell you in this conversation  
7           the reasons why Miss Porter was barred?

8           A    Yes, she did.

9           Q    What did she tell you?

10               MS. CAULO:  Objection.  Beyond the  
11           scope.

12           Q    You can answer.

13           A    There were several reasons.  She indicated at  
14           the time she was relatively new to her  
15           position, so when this came to her attention,  
16           she looked at a policy manual, looked at  
17           Policy S220 and basically went down through  
18           the policy in a chronological manner to  
19           determining what, if any, policy violations  
20           there may be.

21               And the things that she indicated were  
22           part of the decision were the fact that there  
23           was an attempt to impede an investigation,  
24           failure to report possible wrongdoing,

1 failure to obey an order, confidential  
2 communications and the fact that there was  
3 false documentation provided.

4 Q Did she tell you what the false documentation  
5 was?

6 A Basically that Sheila Porter -- Elizabeth's  
7 understanding was that Sheila Porter had an  
8 interaction with Inmate Rosario through a  
9 cell door; that she made some observations  
10 about possible injuries; that there was no  
11 note in the medical administrative record  
12 that this had happened, that she had had  
13 interaction. She then indicated later on  
14 that it was a different type of interaction  
15 with Mr. Rosario.

16 Q What do you mean by a different type of  
17 interaction?

18 A A more thorough medical examination as  
19 opposed to through a cell door, through a  
20 window.

21 Q I'm confused. Did she that Miss Porter  
22 conducted that medical examination, the  
23 thorough medical examination?

24 A No, that she claimed that she had.



1 after you arrived at the House of  
2 Corrections; is that fair to say?

3 A Yes.

4 Q What was your impression of Miss Porter?

5 A That she was a good nurse practitioner.  
6 She's someone who provided good care to the  
7 inmates. I know that she advocated to have  
8 the women have their own clinic up in the  
9 10th floor. We were constantly grappling  
10 with the issue of getting the female inmates  
11 equal access to medical care, because they're  
12 housed on the 10th and 11th floor of  
13 Building 1, it's difficult to bring them  
14 downstairs to the clinic.

15 We also have concerns about having male  
16 and female inmates together. Donna Jurdak,  
17 who was the health services administrator at  
18 the time, had come to me and said that Sheila  
19 wanted to reestablish the clinic at the back  
20 of the 1102 unit, which we had provided the  
21 office space to do.

22 That wasn't Sheila's only function, but  
23 she was primarily the NP that cared for the  
24 women. And she also cared for the inmates.

1 Q So you implemented her recommendation that  
2 their be a separate unit for the female  
3 inmates who were treated by the medical  
4 staff?

5 A Yes.

6 Q Were you satisfied with her job performance?

7 A Yes.

8 Q Did she have a good reputation among the  
9 staff?

10 A She had a reputation of a qualified nurse  
11 practitioner, someone who would put in the  
12 hours that were necessary. She would ensure,  
13 even if there were a lot of inmates on the  
14 list, that she would see them all and make  
15 sure they got care.

16 Q Did you ever have any problems with  
17 Miss Porter with respect to her job  
18 performance?

19 A No.

20 Q I believe you testified that you weren't  
21 aware that she had had any communications  
22 with the FBI until the summer of 2003; is  
23 that right?

24 A Yes.

1 Q You were unaware that Miss Porter was  
2 involved in any way with Inmate Rosario's  
3 allegations in May, 2003, until after she was  
4 barred?

5 A Yes.

6 Q And again, this was during your conversation  
7 with Mr. Bradley and/or Miss Mastrorilli?

8 A Yes.

9 Q You weren't involved in the decision to bar  
10 Miss Porter?

11 A No.

12 Q What do you know about the circumstances of  
13 Miss Porter's barring?

14 MS. CAULO: Objection. Beyond the  
15 scope. You can answer.

16 A I know that there was a concern that when  
17 Mary Ellen Mastrorilli spoke to Sheila Porter  
18 about allegations that Mr. Rosario was making  
19 that -- I'm quoting Mary Ellen, who is  
20 quoting Sheila. Mary Ellen asked Sheila we  
21 need a report if there is any allegation of  
22 wrongdoing so we can look into it. Sheila's  
23 response was, "I'm not talking to you. I'm  
24 talking to the FBI."

1 leaves it up to the medical company to  
2 determine what disciplinary measures should  
3 be taken with respect to infractions that  
4 might take place?

5 A More often than not, yes.

6 Q Although there are situations where you can  
7 bar those independent contractors under  
8 egregious circumstances?

9 MS. CAULO: Objection.

10 A Yes.

11 Q In those situations, where independent  
12 contractors are barred, who has the authority  
13 to make the decision to bar an independent  
14 contractor?

15 A The Sheriff's Department makes the decision  
16 to bar. It's not a termination. It's just  
17 not letting them into the facility.

18 Q I understand. I'm trying to determine which  
19 position, which individual, has that  
20 authority to make that decision.

21 A Generally, a deputy superintendent can do it,  
22 or the superintendent can do it.

23 Q Or the sheriff, his or herself, I take it?

24 A Yes, generally, it would be done under the

1 deputy superintendent's name, but anyone from  
2 deputy super or above has that ability.

3 Q Is the Sheriff required to signoff on that  
4 determination?

5 A No.

6 Q Are you aware of other circumstances, other  
7 than Miss Porter's, where the Sheriff  
8 personally made the decision to bar an  
9 independent contractor?

10 A She would have been briefed -- typically, the  
11 chain of command will go I'll speak with the  
12 Chief of Staff, who will speak with the  
13 Sheriff to brief her on it before at any time  
14 there is a major discipline coming down for  
15 employees or contractors.

16 As far as specific ones, we haven't had  
17 one at the House of Correction -- I think  
18 there was one person that the company decided  
19 to bar since I have been back. So I don't  
20 have specific knowledge. It wouldn't  
21 surprise me.

22 Q I'm asking about your entire tenure at the  
23 House of Corrections or at the jail. Are you  
24 aware of other situations other than

1 scope.

2 A I don't think it was.

3 Q Did Nurse Practitioner Porter violate any  
4 unwritten policies of the Sheriff's  
5 Department?

6 MS. CAULO: Objection.

7 A Our policies are written. We don't have  
8 unwritten policies.

9 Q So nobody would be disciplined for conduct  
10 that wasn't contained in a policy?

11 A That's correct.

12 MR. SCHUMACHER: Now, we can mark S220.

13 (Document marked Exhibit No. 2.)

14 Q I'm handing you what has been marked as  
15 Exhibit 2 for this deposition. Take a second  
16 to review it.

17 A Yes.

18 Q Are you familiar with this document?

19 A Yes.

20 Q What is it?

21 A It was the version of S220 that was in effect  
22 in 2003.

23 Q The first reason that you understand  
24 Miss Porter was barred for was for impeding a

1 past. If this allegation were to have  
2 happened on May 19th, she could have written  
3 a report to SID, to Deputy Superintendent  
4 Mastrorilli, that wouldn't have had to get  
5 into all this. "Please be advised that I saw  
6 Inmate Rene Rosario on this time on this  
7 date, and he indicated that he was beaten by  
8 officer or excessive force was used by  
9 officers. I would like this matter to be  
10 investigated." That would have covered it.  
11 This doesn't cover it.

12 Q That should have been written on an incident  
13 report?

14 A It could be sent in an E-mail, but we have to  
15 be notified of it. It's something that you  
16 would prefer to have on an incident report.  
17 This doesn't tell you that there is an  
18 allegation of wrongdoing. I mean, it's more  
19 medical, how big the bruises were.

20 Q So the form doesn't matter then?

21 MS. CAULO: Objection.

22 A That's not what I said.

23 Q You said it could be in an E-mail or an  
24 incident report; is that right? The

1 Q And then companies would submit an RFP?

2 A A response to it, yes.

3 Q And then the prison chooses which, if any, of  
4 those RFPs to accept?

5 A Yes.

6 Q We talked about the contract. Once an RFP is  
7 accepted, is that considered the contract, or  
8 is there another document that's the  
9 contract?

10 A There is additional documentation that goes  
11 along with it, but the RFP spells out what  
12 the minimum level of care that we expect for  
13 lack of a better word. So when we have  
14 questions on a contract issue with CMS or  
15 PHS, we'll typically refer to the RFP.

16 Q Does the prison have input on the positions  
17 that should be filled with respect to an RFP?

18 A As far as the staffing levels, yes. As far  
19 as interviewing -- again, another difference  
20 between contract and our employees, medical  
21 or the jail, the deputy superintendent or the  
22 ADS conducts every nurse's interview. Here,  
23 we don't do that.

24 At the jail, the health service



1 administrator is part of the command staff  
2 meetings. Here, that's not the case. We  
3 have a staffing grid that says we expect to  
4 have six nurses on in the day shift, six in  
5 the evenings and two on midnights. We expect  
6 there to be so many position hours during the  
7 course of the week, so many NP hours and so  
8 many PA hours during the course of the week.

9 And we leave that up to the health  
10 services administrator to administer that.  
11 Who it is, as long as they meet our minimum  
12 qualifications, as long as we're getting good  
13 healthcare, we kind of take a step back from  
14 that.

15 Q So you tell them what you want and you let  
16 them fill those positions?

17 A Yes.

18 Q Do you require a background check for any  
19 independent contractor that would work in the  
20 prison?

21 A Yes.

22 Q Who administers that background check?

23 A Generally, it's SID. They fill out an  
24 application. A Board of Probation will be

1 run on them. It's a criminal record check.  
2 I'll refer to it as a BOP. That could be run  
3 by SID. It could always be run by our LEAPS  
4 coordinator. She'll run a number of those as  
5 well. It just depends who is available at  
6 the time.

7 Q If it turns out that a proposed contractor  
8 has a criminal record, does the prison have  
9 the authority not to employ that person?

10 MS. CAULO: Objection.

11 MS. HARVEY: Objection.

12 A We would look -- I mean, if someone had open  
13 warrants, we wouldn't want them in there. If  
14 someone had defaults, we wouldn't want them  
15 working there. Do we have people that have  
16 criminal records working in there? Yeah.

17 Q If red flags are raised on a proposed  
18 independent contractor, does the prison have  
19 the authority to not allow that contractor to  
20 work in the prison?

21 A If a nurse just got out of Walpole for  
22 murder, we probably wouldn't want her in  
23 there, or Framingham, yes.

24 Q Nurse practitioners, where do they report to

1 time.

2 Q Is there orientation and training that is  
3 provided by the House of Corrections to new  
4 independent contractors in the medical  
5 services area?

6 A They're given a limited number of policies,  
7 the policies that we think are crucial, and  
8 they are given a tour usually by the HSA or  
9 one of the nurses to show them around the  
10 buildings. It's a big facility, so it's easy  
11 to get lost when you're first there. They  
12 are given generally a brief orientation, but  
13 I would say they're abiding by CMS's rules.  
14 And we let CMS know what rules we expect them  
15 to abide by, so that they can perform  
16 efficiently at the House of Corrections.

17 Q Is it your understanding that they are  
18 trained as well before they start to work in  
19 the prison?

20 MS. CAULO: Objection.

21 MS. HARVEY: Objection.

22 Q Is it your understanding that medical  
23 personnel would receive training with respect  
24 to providing medical care in a prison before

1 administered exclusively by CMS?

2 A Not all the time. There may be training  
3 classes that we have that we may invite them  
4 to participate in. There informal  
5 orientation that's given usually by someone  
6 of rank. Sometimes it's the medical  
7 supervisor who is a sergeant or a captain  
8 that will say "here is the rules; here is  
9 your policy; read them to make sure you  
10 understand them; if you have any questions  
11 about security, you can come and ask me about  
12 it".

13 But it's completely different than the  
14 training that our staff goes through.

15 Q Do you provide guidance to CMS in terms of  
16 what you expect in terms of training for  
17 medical personnel?

18 A There is language in the contract that talks  
19 about the training that they provide us. As  
20 part of the contract, they provide mental  
21 health training to our employees. I know  
22 they have hepatitis shots and things like  
23 that, but I don't think there is any  
24 guidelines to say they need to go to 40 hours

1 correctional environment?

2 A No, I mean, they have to abide by their  
3 continuing education credits that are needed  
4 by their license, but as far as we require,  
5 no.

6 Q That's what I'm asking. You just have the  
7 initial training before they first start  
8 working?

9 A No, they get our policy, and they are told  
10 here is our policies; if you have any  
11 questions, let me know.

12 Q So you don't know anything about any other  
13 training that CMS employees receive before  
14 starting at the prison?

15 A No.

16 Q Would anybody else within the department know  
17 about that training?

18 A I mean, we don't require any training.  
19 Basically, the nurses or the medical staff  
20 have to be able to provide the care. How CMS  
21 or PHS provides that, that's up to them. If  
22 there is a problem with performance, that's  
23 when we get involved. If there is an issue  
24 with a nurse doing something he or she

1           the nurses and/or the inmates so that proper  
2           medical care can be given.

3           Q     Do you know how they record their time?

4           A     There is a time clock in the infirmary.

5           Q     Do you know where they receive their  
6           paychecks?

7           A     I think its comes from CMS corporate  
8           headquarters. I guess it's probably  
9           St. Louis where they are based out of.

10          Q     Do you know would determines a nurse  
11          practitioner's daily schedule?

12          A     The health service administrator.

13          Q     Is that solely up to the health services  
14          administrator?

15          A     Well, yes, if the health service  
16          administrator were to say we only want the  
17          nurse practitioner to work on the midnight  
18          shift and our staffing levels were so low  
19          that it would be problematic to wake inmates  
20          up and bring them down.

21                 But absent that, the only hours that we  
22          require are nursing hours. We want them to  
23          coincide with our shifts. We want a certain  
24          level of staffing, but as far as when the

1 nurse practitioner works, when the doctor  
2 works, that's up to the HSA. As long as the  
3 medical care is being given, that's what we  
4 care about.

5 Q You don't require anything in terms of who  
6 provides the positions, but you have  
7 requirements in terms of the hours the  
8 infirmary is operating under?

9 A There is a staffing grid that we give in the  
10 RFP. It talks about -- for example, we want  
11 a nurse practitioner there seven days a week.  
12 It doesn't say anything about the hours. We  
13 expedite medical care. There will be times  
14 during a lockdown or during a major count  
15 that, unless it's an emergency, medical care  
16 won't be given, but generally speaking, we  
17 allow the medical company to work within the  
18 parameters of the facility and run the show  
19 medically.

20 Q Who provides the equipment that medical  
21 personnel use?

22 A As far as things like syringes, Band-Aids,  
23 things like that, that's CMS. The day-to-day  
24 supplies are given by CMS or PHS. Now, it's

1 PHS. We'll provided the infrastructure-type  
2 of equipment, such as dentist chair, X ray  
3 equipment, things like that, but when it  
4 comes to other supplies, whether it be ace  
5 bandages or any medicine or any narcotics,  
6 any diabetic medication, needles, syringes,  
7 taking care of the medical waste, that's all  
8 CMS or PHS.

9 Q So it's a mix in terms of the provision of  
10 equipment?

11 MS. CAULO: Objection.

12 MS. HARVEY: Objection.

13 A That's not what I said.

14 Q I don't mean to mischaracterize.

15 A I think basically what we do is we give them  
16 office space and some of the infrastructure  
17 things they need to do. We put the roof over  
18 their head and put the lights on and say run  
19 the show.

20 Q What types of infrastructure do you provide?  
21 You mentioned a dentist chair. What other  
22 examples of equipment would you provide to  
23 CMS?

24 A We provide them office space so they can give



1 the care. We provide them with an X ray  
2 machine. There is a dialysis machine that we  
3 provide, but again, it's just some of the  
4 main, big-ticket, infrastructure type of  
5 things that we provide.

6 Q Heavy-duty equipment, if you will?

7 A Yeah.

8 Q Independent contractors, are they required to  
9 follow internal department policies?

10 MS. CAULO: Objection. Asked and  
11 answered.

12 A Yes, they are.

13 Q I have one more brief area, and then we'll be  
14 done. By the way, who maintains custody of  
15 an inmate's medical records?

16 A The medical provider.

17 Q So an inmate's medical record is within the  
18 possession, custody and control, if you will,  
19 of whoever the medical provider is at the  
20 time?

21 A Yes, there is a medical records area that's  
22 extremely secure, and our staff doesn't have  
23 access to that.

24 Q I imagine there are special procedures that

1 would have to be followed in order for the  
2 prison to be able to access an inmate's  
3 medical record?

4 A Basically, it would be unusual. In the event  
5 of a situation like this, if there were  
6 allegations being made, we would probably  
7 want investigations to be able to look at any  
8 injuries or alleged injuries he or she may  
9 have received, yes.

10 Q Do you know how long an inmate's record is  
11 kept at the facility?

12 A 30 years.

13 Q So even after an inmate is long gone, his or  
14 her records will be there for 30 years?

15 A Yes.

16 Q Is that kept on site at the facility?

17 A Yes, right now, we're running out of room,  
18 but we keep it on site.

19 Q You first came to the House of Corrections  
20 in -- you returned to the Suffolk County  
21 House of Corrections in November of 2003; is  
22 that right?

23 A Yes.

24 Q You have been there ever since?

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2 prison to be able to access an inmate's  
3 medical record?

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# EXHIBIT 5



RICHARD J. ROUSE  
SHERIFF

## Suffolk County Sheriff's Department

Jail  
200 Nashua Street  
Boston, MA 02114  
(617) 635-1100

House of Correction  
20 Bradston Street  
Boston, MA 02118  
(617) 635-1000



BRIAN BYRNES  
SPECIAL SHERIFF

August 26, 2002

Nancy Lawrence, Regional Manager  
Correctional Medical Services  
12647 Olive Boulevard  
Saint Lewis, MI 63141-9052

Dear Nancy,

I am writing this letter to express the gratitude of the Suffolk County Sheriff's Department for the commendable job performed by ~~NP Sheila Porter~~ RN Marie Matalunis and LPN Craig Meekins in saving inmate Leroy Ford's life.

On Friday, August 9<sup>th</sup> in the booking room while inmate Leroy Ford was being processed for release the medical staff responded to a man down. Marie Matalunis was the first nurse to respond. She found inmate Leroy Ford conscious but complaining of chest pain; she immediately called for assistance. Craig Meekins and Sheila Porter responded to assist Marie along with several correctional officers. Mr. Ford lost consciousness and suffered cardiac arrest. He was revived by your nursing staff and the correctional officers and sent out by EMS to BMC.

Nancy, these individuals are truly dedicated to their work and we are happy to have them on site at the Suffolk County House of Correction.

Sincerely yours,

A handwritten signature in cursive script that reads "Gerard Horgan".

Gerard Horgan,  
Deputy Superintendent

cc: Donna Jurdak, Health Services Administrator  
Sheila Porter  
Marie Matalunis  
Craig Meekins



MEMORANDUM

TO: Cathy Willis, RN, Sheila Porter, NP, Mary Bottary-Golden, RN  
D. Feliz, Corrections Officer

FROM: Donna Jurdak, RN, Administrator  
Maria Vega, RN, Nursing Supervisor

DATE: December 28, 1994

RE: Emergency Response on 12/23/94, evening shift

We would like to recognize your excellent performance and timely response concerning the man-down in the lobby on 12/23/94 evening shift.

This near tragic incident was assessed and appropriate emergency care was rendered by you, the medical staff. You demonstrated knowledge and successful technique in emergency CPR on the necessitation of the 73 year old female civilian.

This individual is doing well at the hospital facility to date.

cc: John Twomey, Supt.  
Anthony Leggiero, Lt.  
Ann Mack, Regional Administrator, FNP